IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7736 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SOMABHAI REVABHAI CHAMAR

Versus

TALUKA DEVELOPMENT OFFICER

Appearance:

MR BB NAIK for Petitioner

None present for Respondent No. 1, 3, 4, 5, 6, 7, 8, 9,10

MR VM PANCHOLI, AGP, for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 04/04/2000

ORAL JUDGEMENT

1. The petitioner, a Sarpanch of the Kanknol Gram Panchayat, by this writ petition under Article 226 of the Constitution challenges the validity, propriety and correctness of the order dated 15th October, 1997,

annexure `G' and the order dated 7th October, 1997, annexure `C' by which the meeting of the Kanknol Gram Panchayat was called to consider the motion of no confidence against the petitioner. The petitioner is further challenging the proceedings of the meeting of Kanknol Gram Panchayat dated 13th October, 1997.

2. The facts of the case leading to filing of this special civil application are that the petitioner was elected as a Sarpanch of the Gram Panchayat. He belongs to scheduled caste. It is the say of the petitioner that being the scheduled caste, he was not liked by persons belonging to Patel and Darbar communities as Sarpanch. On 4-9-1997 in pursuance to the representation of the petitioner and Deputy Sarpanch of the Panchayat, the Minister of Panchayat and Social Welfare, Government of Gujarat vide his letter dated 4-9-1998 directed that the Talati-cum-Secretary of the Gram Panchayat should be transferred immediately. The concerned Talatai-cum-Secretary felt offended against this letter of the Hon'ble Minister of Panchayat and Social Welfare and he started a propaganda against the petitioner. He instigated various members of the Kanknol Gram Panchayat,majority of whom are belonging to the Patel and Darbar communities, to move no confidence motion against the petitioner. On 15th September, 1997, ten members of Kanknol Gram Panchayat have given a notice under sec. 56 (1) of the Gujarat Panchayat Act, 1961. The petitioner preferred a revision application before the respondent No.2 and therein on 24th September, 1997 interim relief has been granted in favour of the petitioner. However, the respondent No.2 on 6th October, 1997, vacated the said interim relief. On 6th October, 1997, the Talati-cum-Secretary of the Panchayat made a report to the Taluka Development Officer informing him that the petitioner has failed to call the meeting as prescribed under section 56 (5)(a) of the Act to consider the motion of no confidence against the petitioner by ten members. On 7th October, 1997, the respondent No.1, T.D.O. directed to convene the meeting of the Gram Panchayat to consider motion of no confidence against the petitioner on 13th October, 1997 at 12 noon. The Talati-cum-Secretary of the Panchayat issued the notice and agenda of convening the scheduled meeting of October 13, 1997 at 12 noon. It is the say of the petitioner that the aforesaid notice of Talati-cum-Secretary does not contain any date on which it is issued by him. The meeting was convened on 13th October, 1997 and it is stated therein that the resolution of no confidence against the petitioner was unanimously passed.

3. In between the petitioner challenges the order dated 6th October, 1997 of the respondent No.2 by filing special civil application No. 7426 of 1997 in this court. That petition was heard and disposed of on 8th October, 1997. This court has given direction to the respondent No.2 to decide the revision application of the petitioner expeditiously and accordingly the revision application was decided on 15th October, 1997 and the same was dismissed. However, the revisional authority has suspended the implementation and execution of the impugned order for ten days.

4. This court though admitted this petition on 19th April, 1999 but interim relief has not been granted. Reply to the special civil application has been filed by the Talati-cum-Secretary and the respondent No.3.

5. Shri Naik, learned counsel for the petitioner contended that the Taluka Development Officer in connivance with the Talati-cum-Secretary of the Gram Panchayat has acted wholly contrary to the provisions of section 56 (5)(a) of the Act. It is submitted that the Taluka Development Officer played in the hands of the Talati-cum-Secretary and they were bent upon to see that the petitioner is ousted from the office of the Sarpanch of the Panchayat and that is how they have proceeded in the matter. Referring to section 56 (5)(b) of the Act, Shri Naik contended that the power to call the meeting is available with the Taluka Development Officer concerned only in case where the petitioner fails to call the meeting of the Panchayat within 15 days from the date of receipt of the notice. As per the provisions aforesaid, if within 15 days, the meeting is not called then the report has to be made by the Secretary of the Panchayat to the Taluka Development Officer and then he was competent to call the meeting of the Panchayat within 15 days from the date of receipt of the report. In this case, the stay has been vacated by the respondent No.2 on 6th October, 1997 and on the very day, the Secretary has prepared the report and to utter surprise of the petitioner, the the same day, the District Development officer has given direction for convening the meeting for considering the no confidence motion against the petitioner. In the facts of this case and the way and the manner in which the Taluka Development Officer acted, what Shri Naik contends that he was highly interested in the matter. It is further contended that the Taluka Development Officer has failed to perform the statutory duties by not issuing the notices to individual members of the Panchayat calling the meeting of the Panchayat to consider the motion of no confidence against the

petitioner. It has next been contended that otherwise also from the proceedings of the meeting dated 13th October, 1997, it is clear that it is not as provided in the rules. This resolution was not proposed and as such there is no question of seconding it. No voting has taken place. Lastly, it is contended that the respondent No.2 has not considered all the aspects and grounds raised in the revision application and in most cryptic manner, the revision application has been decided.

6. Shri Pancholi, on the other hand, supported the order passed by the respondent No.2.

7. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

8. From bare reading of the provisions as contained in sections 56 (5) (a) and 56 (5)(b) of the Act, 1961, I find sufficient merits in the contention raised by the learned counsel for the petitioner that the Taluka Development Officer has proceeded in the matter in total contravention to the provisions of law. Notice of no confidence motion was given by ten members, no doubt to the petitioner which was received on 15th September, 1997 but that has been challenged by the petitioner before the respondent No.2 and the interim relief has been granted in his favour on 24th September, 1997. So upto 24th September, 1997, 15 days time from the date of receipt of notice had not been expired. This stay continued till 6th October, 1997. As per the provisions as contained in section 56 (5) (a) of the Act, the petitioner was required to convene the meeting of the Gram Panchayat within 15 days from the date of receipt of notice for motion of no confidence. Leaving apart where this 15 days period has to be counted from 6th October, 1997 or from 15th September, 1997, the court cannot be oblivious of the fact that from 24th September, 1997 to 5th October, 1997 the interim relief was there in favour of the petitioner. During this period, the petitioner was not under any obligation to convene the meeting of the Gram Panchayat. If we go by the facts of this case, by 24th September, 1997, only eight days were expired after vacation of the interim relief, the petitioner had seven days to call the meeting and he could have called the meeting, but before it could have been done by him, the Talati-cum-Secretary of the Gram Panchayat prepared a report on the same day and send the same to the T.D.O. and T.D.O. without looking into the provisions of section 56 of the Act, ordered for convening the meeting of the Gram Panchayat on 13th October, 1997. From these facts, it is clearly borne out that the T.D.O. and the

Talati-cum-Secretary have not acted in accordance with the provisions of section 56 of the ACt, 1961. Learned counsel for the respondents has failed to show any provision from the ACt or any decision of this Court or of the Apex Court that this period during which the interim relief was operating in the matter has to be counted while counting 15 days period from 15th September, 1997. In the absence of such a provision in the Act as well as the decision of this court or of the Apex Court, the petitioner has all the right to call the meeting but the Taluka Development Officer has not waited for this and on the same day on which stay has been vacated, all these proceedings have been initiated.

9. As this petition, deserves to be accepted only on this ground, I do not consider it to be necessary to go on and decide the other contentions raised by the learned counsel for the petitioner.

10. In the result, this special civil application succeeds and the same is allowed. The proceedings of the meeting of the Gram Panchayat concerned dated 13th October, 1997 are declared to be illegal. As a consequence of this declaration, the order passed by the respondent No.2 confirming those proceedings of the meeting as well as rejecting the revision application of the petitioner is also quashed and set aside. Rule is made absolute accordingly with no order as to costs.

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